IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3381 OF 2006

Messrs Ramji Jeram & Co. : Petitioner

V/s.

Mr.Ajit Jamnadas Hingwala & Anr. : Respondents

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Mr.V.M.Bhardwaj for the petitioner.

None present for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : JULY 12, 2007.

P.C.

1. This Writ Petition is by the plaintiff against the order of the Bench of the Court of Small Causes at Mumbai in revision decided on 7.3.2006.

2. By the impugned order, the Bench of the Court of Small Causes has held that the plaintiff’s application for interim and ad-interim relief could not have been heard unless the question of jurisdiction raised by the defendants-respondents was not decided. Earlier in the suit, the trial Judge has passed an order on the plaintiff’s application for interim and ad-interim relief that the application would be valid for the said reliefs

and that the issue of jurisdiction raised by the defendants would be considered. It appears from the order that the trial Court held that the application for interim relief would be heard before deciding the issue of jurisdiction.

3. The defendants carried the matter in revision before the appellate Bench which has passed the impugned order by observing that it is a settled law that the Court is not empowered to grant or set aside the interim relief of injunction and relief of like nature while deciding a preliminary issue raised under section 9-A of the C.P.C. The Bench, therefore, ordered the trial Court to first decide the jurisdiction under section 9-A, in accordance with law, and thereafter to proceed to hear and dispose of the application for injunction at exh.7. This observation is not correct. Section 9A in its application in the State of Maharashtra reads as follows:-

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.--(1) Notwithstanding anything contained in this Code or any

other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the

jurisdiction."

It is clear from sub-section (2) that the Court can take up the application for interim relief for hearing, pending determination of the preliminary issue as to jurisdiction and may further even grant such interim relief as it may consider necessary. This provision has fallen for consideration before the Supreme Court in Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd. (1997) 3 SCC 443) wherein the Supreme Court has observed in paragraph 28 as follows:-

> "28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A -- to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing

> any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions."

4. In this view of the matter, the impugned order of the Bench of Small Causes Court is hereby set aside and the matter is remanded back to the trial Court to proceed, in accordance with law.

5. The rule is made absolute in the above terms.

S.A. BOBDE, J.